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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,961	08/26/2003	Gerhard H. Weiler	WEI-113	3603

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/647,961

Applicant(s)

WEILER ET AL.

Examiner

Robin A. Hylton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings were received on February 7, 2005. These drawings are approved by the examiner.

Claim Rejections - 35 USC § 112

2. Claims 8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

What structure is represented by a "rotary slot position indicator"? It is believed applicant intends this phrase to set forth an indicator for a slot position on a rotary device.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by O'Meara (US 5,228,593).

O'Meara teaches a hermetically sealed container comprising: a hollow body **13** terminating in a neck portion **33** defining an opening, a twist-off access closure **27** including a unitary grip tab **41** and occluding the opening, an axially movable overcap **11** rotatably mounted to the container surrounding the access closure and neck portion, the overcap including a top portion **23** and a unitary skirt portion having an expandable rim, the top portion defining at least one elongate slot defined by the channel including groove **39** adapted to engage the grip tab when the overcap is pushed toward the access closure and then rotated about the neck portion to twist-off the access closure.

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5. Claims 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt (US 4,620,638).

Schmidt teaches a hermetically sealed container comprising: a hollow body 2 terminating in a neck portion 4 defining an opening, a twist-off access closure 6 including a unitary grip tab and occluding the opening, an axially movable overcap 1 rotatably mounted to the container surrounding the access closure and neck portion, the overcap including a top portion and a unitary skirt portion having an expandable rim by nature of its flexible material composition, the top portion defining at least one slot 21a adapted to engage the grip tab when the overcap is pushed toward the access closure and then rotated about the neck portion to twist-off the access closure, wherein the overcap defines three peripherally spaced intersecting slots 21a. See the embodiment illustrated in figures 5a-5c and figure 5c depicting four slots.

Claim Rejections - 35 USC § 103

6. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt in view of Gettig et al (US 5,085,332).

Schmidt teaches the claimed closure and container (see figures 5a-5c) except for the skirt being defined by a plurality of dentils.

Gettig teaches it is known to provide a skirt with a plurality of dentils.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a skirt defined by a plurality of dentils. Doing so allows for more skirt flexure in the downward movement of the cap as the skirt bead moves over the container neck bead.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of O'Meara.

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Schmidt as modified teaches the claimed closure except for serrations on the overcap skirt.

O'Meara teaches it is known to provide a cap skirt with serrations for gripping.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of serrations to the skirt of Schmidt. Doing so allows for better gripping of the overcap skirt wall.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior as applied to claim 1 above, and further in view of Bloom (US 6,758,358).

Schmidt as modified teaches the claimed closure except for a rotary slot position indicator on the skirt portion of the overcap.

Bloom teaches it is known to provide a cap skirt with to provide a rotary slot position indicator on the skirt portion of the overcap.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a rotary slot position indicator on the skirt portion of the overcap for alignment with a rotary slot position indicator on the body. Doing so indicates to the user the amount of rotation necessary to align the slot and grip tab to initially open the associated container.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt in view of Bloom.

Schmidt teaches the claimed closure except for a rotary slot position indicator on the body of the container adapted for alignment with a rotary slot position indicator on the skirt portion of the overcap.

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Bloom teaches it is known to provide a rotary slot position indicator on the body of the container adapted for alignment with a rotary slot position indicator on the skirt portion of the overcap.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of rotary slot position indicator on the body of the container adapted for alignment with a rotary slot position indicator on the skirt portion of the overcap. Doing so indicates to the user the amount of rotation necessary to align the slot and the grip tab to initially open the associated container.

10. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt in view of Getting.

Schmidt teaches the claimed closure and container (see figures 5a-5c) except for the skirt being defined by a plurality of dentils.

Gettig teaches it is known to provide a skirt with a plurality of dentils.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a skirt defined by a plurality of dentils. Doing so allows for more skirt flexure in the downward movement of the cap as the skirt bead moves over the container neck bead.

11. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the applied art as applied to claim 12 above, and further in view of O'Meara.

Schmidt as modified teaches the claimed closure except for serrations on the overcap skirt.

O'Meara teaches it is known to provide a cap skirt with serrations for gripping.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of serrations to the skirt of Schmidt. Doing so allows for better gripping of the overcap skirt wall.

Response to Arguments

12. Applicant's arguments filed February 7, 2005 have been fully considered but they are not persuasive.

Regarding applicant's remarks directed to O'Meara not having a slot, it is pointed out that the slot of the instant claims is not limited by any orientation or location on the overcap. Thus, the downwardly extending channel including the groove 39 is an elongate slot.

Applicant argues that neither of the overcaps of O'Meara or Schmidt or Getting disclose an expandable rim. Wherein the claim limitations are given their broadest, reasonable interpretation, the term "expandable" is read to include the capability of the rim to expand no matter how much or how little. Although the rims of the applied prior art may not expand to the degree of that of the instant invention, the rims are inherent "expandable" since they are formed of a plastic material and the lower portions of these skirts are seen in the various drawing figures as expanding to engage the slightly larger diameter container necks. Additionally, the slotted skirt provides expandability.

Regarding the slots of Schmidt, claim 11 does not limit the slots to be three in number and equally spaced apart. The open term "comprising" of the independent claim allows for more than the three slots set forth in claim 11.

Regarding the remarks directed to the combination of Schmidt in view of Getting, the embodiment illustrated in figures 5a-5c does not contain a thick, screw-threaded closure skirt. The overcap is of a push-on, twist-off configuration and is expandable to flex over the rib on the upper portion of the container neck.

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Regarding applicant's remarks directed toward dentils, the closure of Getting has dentils to the degree set forth in the claims and the disclosure of the instant invention. the segments of the Getting skirt include an inwardly directed lip as that disclosed.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

13. Applicant's arguments directed to the "rotary slot position indicators", see page 5, paragraph 5, filed February 7, 2005, with respect to the rejections of claims 7 and 10 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bloom. In view of the amendment to the claims, applicant's arguments are persuasive and the new rejections have been set forth.

Conclusion

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature

Date _____


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
May 13, 2005


Robin A. Hylton
Primary Examiner
GAU 3727

